Returning to the provisions of the Ordinance, section 5 deals with the complementary question of the cases in which a decree of this Court can be substituted for a Japanese decree. Sub-section (6) of that section provides that no such decree shall be substituted if —

"(a) the Japanese Court acted without jurisdiction; or

(d) the Japanese decree was based upon principles unknown to the existing law."

The only other provision that calls for attention here is section 7 which provides that no Japanese decree "shall be pleaded by way of set-off or counterclaim or otherwise in any proceedings" unless the decree of this Court has been substituted for it.

From a comparison of the wording of section 3 and section 5 it is clear that the Legislature has drawn a distinction between the case where a decree is based on principles unknown to the existing laws and the case where a Court has acted without jurisdiction, a distinction corresponding to the well known distinction between substantive and adjective law. That proposition would seem to follow from the fact that the two cases are set out separately in section 5. On that basis a party who seeks to bring himself within the scope of section 3(4)(c) as a preparatory step to asking the Court to exercise in his favour the discretion given to it by section 3(2) must shew that the decree which he wishes set aside is based on principles of substantive law unknown to the existing laws, it is not sufficient to shew merely that the Court passing the decree acted without jurisdiction. This the present applicant has failed to do for it is clear that the decree is based on the doctrine of agency of necessity which is thus stated in the F.M.S. Contract Enactment as follows :—

"An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances."

Whether the Japanese Court applied that doctrine correctly is, of course, a matter of opinion but, on the face of it, all the circumstances which justify the application of the doctrine were present. The agent could not communicate with his principal, the course he wished to take was the only reasonable and prudent one to take in the circumstances and he appeared to be acting *bona fide* in the interest of all parties concerned.

But even if the applicant had brought himself within section 3(4)(c) I would refuse to exercise my discretion under section 3(2) in his favour for two reasons.

In the first place, I am asked to set the Japanese decree aside so as to clear the way for an attack upon the titles of all the respondents other than the first to the land of which they are at present in possession, and I am asked to do so without a scintilla of evidence even to suggest that they are not all innocent purchasers in good faith for value. Moreover, I have nothing but the bare opinion of Mathuva Thever which may or may not be of any value to suggest that he did not in fact have power to sell the applicant's land irrespective of any order by the Japanese Court.

In the second place, I refuse to make the order asked for because I fail to see that to do so would be of any legitimate advantage to the applicant. There may have been fraud, there may have been conspiracy, there may have been lack of contractual power on the part of Mathuva Thever. On all these points all I have to say is there is a complete absence of evidence at this stage. If, however, evidence be forthcoming of any of these things the Japanese decree of 16th January, 1945, will be of no assistance whatsoever to Mathuva Thever or any of the other respondents. It was made without jurisdiction and is to be treated as if it had never existed. By reason of section 7 of the Japanese Judgments Ordinance it cannot be set up in any way by any of the defendants in answer to any claim that may be made against him. In the circumstances I fail to see that any useful purpose would be served by setting it aside.

The application is dismissed with costs.

Application dismissed.

SOOSAY DASS v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Taylor, J.) February 23, 1951]

[K. L. — Criminal Appeal No. 79 of 1950]

Accomplice — Prevention of Corruption Ordinance, 1950, s. 13(3).

The Prevention of Corruption Ordinance, 1950, section 13(3) modifies the law and practice not as to accomplices generally but only as to a specified class of accomplices. In cases to which this Ordinance applies a witness who is an accomplice only by reason of making a corrupt payment is not presumed to be unworthy of credit.

A person who makes a corrupt payment only under pressure is less seriously discredited than one who does so voluntarily.

Cases referred to :—

(1) *Trowell v. Public Prosecutor* (1941) F.M.S.-L.R. 77 at p. 78; (1946) M.L.J. 41.

(2) *Public Prosecutor v. Haji Ismail* (1939) F.M.S.L.R. 134; (1940) M.L.J. 76.

(3) *Daimon bin Banda v. Public Prosecutor* (1951) M.L.J. 11.

(4) *Quinn v. Leathem* (1901) A.C. 495 at p. 504.

APPEAL from Magistrate's Court, Kuala Lumpur.

B. J. P. Joaquim and *K. K. Benjamin* for the appellant.

A. M. Webb (D.P.P.) for the respondent.

The facts and arguments appear sufficiently from the judgment.

Cur. Adv. Vult.

Taylor, J. : — The appellant is a railway foreman. He was charged on two counts with corruptly accepting $22.00 and $24.00 in May and June 1950 from a leading fitter working under him. The story was, briefly, that the two leading fitters collected $1.00 or $2.00 a month from each workman in the gang telling them that the money was to be given to the foreman to "sweeten" him. The workmen paid without protest, and as the learned Magistrate rightly remarked they were clearly of the opinion that they had no grievance at all; they seemed to regard payments to their immediate superiors for imaginary favours as an ordinary incident which, of course, makes it difficult to prevent the receipt of such gifts. I entirely deny, however, that this type of corruption — the gift of cash — is hard to prove; it can be proved with comparative ease by ordinary police methods. Secret commissions are another matter.

The two leading fitters say that the money they collected in this manner was handed over to the accused and that they also collected similar sums in the month of July. Meantime, however, the police had been informed, and marked notes were supplied with a view to trapping the accused, but when the money was offered to him he flatly refused to accept it and the trap failed. However, the police prosecuted him in respect of the May and June payments.

Manifestly, the two leading fitters were accomplices. The first principle of the criminal law is that no man is to be convicted unless his guilt is proved beyond reasonable doubt, and a well-established application of this principle is that it is not safe to convict on the evidence of an accomplice unless he is corroborated by independent evidence of some material particular implicating the accused. It is not illegal to convict on such testimony but juries are always strongly advised that it is unsafe to do so, and any conviction on such evidence by a Judge or Magistrate sitting alone should be set aside unless it is clear from the record that he appreciated the danger and that the judgment is not otherwise open to objection; a Judge alone may fittingly convict on such evidence only in a very exceptional case. This is the effect of a decision of the Canadian Court of appeal applied by Horne, J., in *Trowell's* case[1], and it expresses also the effect of an unbroken series of decisions of all the Malayan Judges who have ever dealt with the question. The decision in *Public Prosecutor v. Haji Ismail*[2], is wholly in accord; that case whittles nothing away; it explains how the principle should be applied in such circumstances as are there stated.

These cases, however, were all prior to the Prevention of Corruption Ordinance 1950, section 13(3) of which provides that in corruption cases a person shall not be presumed to be unworthy of credit by reason only of any corrupt payment of money by him. This modifies the law as to accomplices to this extent only — that where there is no reason for calling a man an accomplice excepting the fact that he paid a bribe the Court may, in its discretion and if in the circumstances it feels it safe to do so, act on his evidence without corroboration. The Ordinance does not in terms so provide but in my opinion it is necessary, in any case where this sub-section is applied, that the Magistrate should clearly state which of the witnesses he considers to be accomplices and why, and which of those witnesses he considers to be within the sub-section. The section does not abrogate the established practice nor does it apply to accomplices generally; it simply defines a particular class of accomplice whose complicity is not serious enough necessarily to raise a presumption of discredit.

Counsel for the Public Prosecutor said that my judgment in *Daimon's* case[3] had been read to mean that a man who pays voluntarily is within the sub-section but that a man who pays under pressure is not. I never used any expressions which could bear that meaning. Every judgment must be read as governed by the facts of the case — *Quinn v. Leathem*[4]. In *Daimon's* case there could have been no pressure at the date of the payment, so my judgment in that case relates only to volunteers.

In this case the workmen paid under pressure, so I now express my opinion on that aspect.

A man who becomes an accomplice only under pressure is less seriously discredited than a man who becomes an accomplice voluntarily. The workmen in this case paid under presssure and are within the section.

Counsel for the appellant said that every man must be either an accomplice or not but that is a very misleading proposition. There always have been degrees of complicity and the degree of complicity has always been one of the matters to be considered in deciding whether or not corroboration can be dispensed with.

The real meaning of this sub-section is admirably illustrated by the facts of this case; the ordinary workmen were within the sub-section. The two leading fitters were manifestly not within the sub-section because they did not only pay; they actively collected and they exerted pressure in doing so; on their own showing they used the methods of extortioners.

It is not necessary to analyse the evidence in great detail. The general tenor of the judgment is this. The learned Magistrate sets out the case for the prosecution without saying how much of it he accepted. He was asked to rule that it did not establish a *prima facie* case — because there was no evidence, except that of two accomplices, implicating the accused. He overruled this submission, relying on *Ismail's* case, *supra,* at page 140 and on section 13(3) of the Prevention of Corruption Ordinance. This was a correct application of *Ismail's* case at that stage. The coupling of the section with the case, however, in one sentence, makes the reasons for the ruling very obscure. Having called the defence, the learned Magistrate criticised it in a manner which was, in my opinion, unnecessarily severe and, in some respects, ill-founded. To give one example, he thought that the suggestion that the case had been "framed" was unreasonable because it is difficult to frame a case which requires the concurrence of a large number of witnesses. That is a serious misdirection on the facts of this case. It was common ground that the two leading fitters had obtained the money from the workmen by saying it was for the foreman; the workmen believed this and paid; but their belief does not prove that any of the money reached the foreman. Not one of the workmen ever paid it to him or even spoke with him on the matter.

Only the two leading fitters implicated the accused. If the case was framed, only those two were concerned in the framing. The suggestion may have been untrue but it was not unreasonable.

Having rejected the defence the learned Magistrate reconsidered the whole record and found the prosecution evidence to be correct; he accordingly convicted the accused.

In my view this was a misdirection. Read as a whole the judgment comes to this; he found that the prosecution had set up a *prima facie* case and called on the defence; he rejected the defence and convicted the accused. This is perilously near to applying the standard of proof applicable to civil cases. The method is wrong. Where the defence fails it is still necessary to go back and examine the prosecution case by itself to see whether it goes beyond the *prima facie* stage and establishes guilt beyond reasonable doubt. Here, the fact that an offence had been committed was clearly proved. The sole question remaining was whether the accused took part in it. The only evidence that he did so was that of two men who certainly took part in it. They did not merely pay; they collected, and were therefore not within the Ordinance. The record does not shew that the Magistrate appreciated the danger of convicting on the uncorroborated evidence of accomplices. The case was not proved beyond reasonable doubt so the conviction and sentence must be quashed.

There was one minor point; a purported police report was proved but it was not the first report and, therefore, in law, it was an investigation statement and inadmissible as in *Daimon's* case, *supra.* The learned Deputy Public Prosecutor conceded that it was inadmissible. In any event it had little probative value and the Magistrate never attached any weight to it. This was illegal only in the sense that it was a misreception of evidence, and since it had no effect as evidence it does not vitiate the trial.

Appeal allowed.

THE DEPUTY COMMISSIONER OF LABOUR, PERAK, for and on behalf of the dependants of YAHAYA BIN MAT (DECEASED)

v.

THE SITIAWAN TRANSPORT COMPANY, LTD.

[App. Civ. Juris. (Thomson, J.) March 10, 1951]

[Ipoh — Civil Appeal No. 28 of 1950]

Workmen's Compensation — Accident — Workmen's compensation liability — General principals of — Workmen's Compensation Enactment (Cap. 155) s. 3(1).

The facts in this were as follows:

In the early afternoon of 13th March, 1950, a police vehicle proceeding from Bruas in the direction of Sitiawan was ambushed by bandits at the 39th Mile on the Bruas-Sitiawan Road. Three Police officers and a civilian were killed and the vehicle was set on fire. Shortly afterwards, a bus belonging to the respondent company which was approaching the scene of this ambush from the direction of Sitiawan was also stopped by bandits, presumably the same body as had attacked the Police vehicle. The persons within the bus were required to leave it, the passengers being required to stand on one side of the road while the deceased, who was the conductor of the bus, and the driver were required to stand on the other. The passengers were required to deliver up their identification cards. One of the bandits shot the deceased at close range causing him to fall down. The bus was then damaged and set on fire and the bandits departed taking with them the bus collections. At some stage of the proceedings after he was shot the deceased had his throat cut by a bandit, and, although there is no direct evidence